

00-0879 P.M.T. v. Salt Lake Community College Issued: 2/28/02

Salt Lake Community College ("SLCC") and its workers compensation insurance carrier, Workers Compensation Fund ("WCF"), ask the Utah Labor Commission to review the Administrative Law Judge's award of temporary disability compensation to P. M. T. under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Ann.).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12, Utah Code Ann. §34A-2-801(3) and Utah Admin. Code R602-2-1.M.

BACKGROUND AND ISSUE PRESENTED

On February 14, 2000, Ms. T. injured her shoulder in a work-related accident at SLCC. The parties agree Ms. T. is entitled to workers' compensation benefits for her injury. However, SLCC and WCF contend they made medically appropriate part-time light duty work available to Ms. T. during the period of August 21 to October 30, 2000. They further contend that because Ms. T. refused to accept such work, her temporary disability benefits under the workers' compensation system should be reduced accordingly.

In a decision issued November 9, 2001, the ALJ found that Ms. T. was never adequately informed of the terms and conditions of the available light duty work assignment. The ALJ therefore concluded that Ms. T. was justified in not reporting to work for the light duty assignment. The ALJ awarded full temporary total disability compensation to Ms. T. for the period in question. SLCC and WCF dispute the ALJ's findings and conclusions and ask the Commission to review the ALJ's award of benefits.

FINDINGS OF FACT

The parties do not dispute the fact that Ms. T. injured her right shoulder in a work related accident at SLCC on February 14, 2000, and that Ms. T. is entitled to the benefits provided by the Act for her injuries. The description of Ms. T.'s accident, her resulting injury and the ensuing medical treatment set forth in the ALJ's decision are hereby adopted by the Commission.

As to question of whether SLCC made medically appropriate light duty work available to Ms. T., the Commission makes its own findings of fact, as follows.

For several days beginning on August 16, 2000, SLCC and WCF informed Ms. T. by telephone, letter and personal conversation that a part-time light duty position as a cashier was available to her. Ultimately, this information was summarized in a letter from SLCC to Ms. T. dated August 23, 2000, specifically advising Ms. T. that: 1) she had been released to modified duty work by her physician; 2) such modified work was available for her at SLCC; 3) she must report to work by August 28, 2000, at 9 a.m.; and 4) her failure to report for work would result in termination from employment at SLCC and loss of temporary disability compensation. After receiving the foregoing letter, Ms. T. did not contact SLCC to obtain clarification or to suggest alternative arrangements. Nor did Ms. T. report for work as instructed by SLCC's letter.

The record establishes that SLCC did, in fact, have a light duty position available for Ms. T. that was within the medical restrictions established by Ms. T.'s treating physician. The position would have provided four hours of work per day at \$6.50 per hour. Although Ms. T. has put forward various reasons for declining such work, her testimony is vague and equivocal. The preponderance of evidence, including Ms. T.'s own testimony, establishes that Ms. T. did not accept the proffered work because of personal reasons, rather than any inability to perform the work.

DISCUSSION AND CONCLUSION OF LAW

As noted in the ALJ's decision, an injured worker is generally entitled to temporary total disability compensation from the date of accident until the healing period has ended. However, if an injured worker is released to light duty work during the healing period, the employer may choose to provide such light duty work. In that case, the injured worker's right to temporary disability compensation will be reduced to reflect his or her earnings from the light duty work. See §34A-2-410 of the Act. The Commission has consistently concluded in the past that an injured worker's unjustified refusal of an offer of appropriate light duty work terminates the injured worker's right to continuing temporary disability compensation.

In this case, Ms. T. contends she was justified in failing to accept SLCC's offer of light duty work because she had not been informed of the terms and physical requirements of the position. Ms. T. also claims she was unsure whether the proposed employment was consistent with the work restrictions established by her treating physician. However, at least by the time Ms. T. received SLCC's letter of August 23, 2000, her questions and concerns were sufficiently addressed. At the very least, Ms. T. could be expected to report to work in a good faith effort to resume employment. But Ms. T. neither reported for the offered work at SLCC nor engaged in a dialogue with SLCC and WCF in order to develop an alternative position.

Under these circumstances, the Commission concludes that, as of August 28, 2000, Ms. T. had been released to light duty work and had been offered medically appropriate light duty work by SLCC and WCF. Because Ms. T. refused such light duty work, §34A-2-410 of the Act requires that her temporary total disability compensation for the period of August 28 through October 30, 2000, be reduced by \$86 per week to reflect the amount Ms. T. would have earned had she accepted the light duty work.

ORDER

In light of the foregoing, the Commission grants SLCC and WCF's motion for review and modifies the "Order" entered by the ALJ as follows:

It is hereby ordered that Salt Lake Community College and Workers Compensation Fund shall pay Paula M. T. temporary total disability compensation for the period of August 21 to August 28, 2000, at the rate of \$173 per week. Salt Lake Community College and Workers Compensation Fund shall also pay Paula M. T. temporary partial disability compensation for the period of August 28 to October 30, 2000, a period of 9.286 weeks, at the rate of \$87 per week. The foregoing sums shall be paid with interest at the rate of 8% per annum from the date each payment was due.

Dated this 28th day of February, 2002.

R. Lee Ellertson, Commissioner